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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Petition of Mpower Communications ) CC Docket No. 01-117  
Corp. for Establishment of New Flexible )  
Contract Mechanism Not Subject to "Pick )  
And Choose" )

**REPLY COMMENTS OF WORLDCOM, INC.**

WorldCom, Inc. ("WorldCom"), hereby files its reply comments in response to comments filed regarding the above-captioned Petition filed by Mpower Communications Corporation ("Mpower").<sup>1</sup>

WorldCom maintains its opposition to Mpower's petition because continued enforcement of sections 252(e) and 252(i) is necessary to ensure that incumbent local exchange carriers ("LECs") charges and practices in negotiating interconnection agreements with competitive LECs are just, reasonable and nondiscriminatory. It is WorldCom's view that Mpower's petition would give incumbent LECs power over competing providers, including the power to link contracts to noncompete provisions, contract on more favorable terms with companies that do not want elements necessary to compete in certain segments or link several favorable terms in a contract with a provision that only one particular company could meet. Comments filed by BellSouth, Verizon and Qwest validate WorldCom's concerns.

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<sup>1</sup> Petition of Mpower Communications Corp. for Establishment of New Flexible Contract Mechanism Not Subject to "Pick and Choose," CC Docket No. 01-117 (filed May 25, 2001) (the "Petition").

BellSouth and Verizon stress that FLEX contracts should be totally “voluntary.” BellSouth Comments at 2; Verizon Comments at 3. For incumbent LECs perhaps negotiations will feel voluntary, but for competitive LECs there will be certain pressure to concede to the ILEC in order to gain access to critical elements. It is the incumbent LECs that will insist that all agreements negotiated with competitive LECs be FLEX contracts and will insert poison pills to ensure that each FLEX contract will only be effectively used by the negotiating competitive LEC.

Like Mpower, the incumbent LECs fail to demonstrate why the current regime is insufficient to allow to freely negotiate contracts that would benefit both the competitive and incumbent LEC. Instead, the incumbent LECs repeat their dislike of section 252(i)’s requirement that competitive LECs be permitted to pick and choose. Neither Mpower nor the commenting incumbent LECs can cite to any change in Commission position or point to changed market conditions that would warrant such a departure from the Act’s two principal safeguards employed to prevent discrimination by incumbent LECs. As several parties point out, the incumbents continue to control essential facilities and own the vast majority of the telecommunications network in the country. AT&T Comments at 8; Sprint Comments at 2; Focal Comments at 3; Z-Tel Comments at 3-4.

Verizon and BellSouth also claim that FLEX agreements should be negotiated outside the section 251 process. Verizon Comments at 3. Moreover, as WorldCom pointed out, incumbent and competitive LECs already have the right to negotiate outside of the section 251 regime. WorldCom Comments at 4-5. Section 252(a)(1) expressly states that carriers can *voluntarily* negotiate agreements without regard to the standards set forth in sections 251(b) and (c). Consequently, agreements voluntarily negotiated

under section 252(a)(1) are already “separate and distinct” from agreements pursuant to sections 251 and 252. BellSouth Comments at 3. The incumbent LECs cannot keep voluntarily negotiated agreements from the purview of the state commissions or the Commission. Even though Congress permitted incumbents and their competitors to voluntarily negotiate agreements outside of the section 251 process, it nevertheless intended for those agreements to undergo review by the state commission. Section 252(a)(1) states that such agreements “shall be submitted to the State commission under subsection (e) of this section.” Mpower’s proposal clearly seeks to nullify this provision.

Continued enforcement of section 252(e), and section 252(a)(1), is necessary to maintain public disclosure of and monitor incumbent LEC use of their bargaining power. As Covad pointed out, the incumbents “detest” the pick and choose requirement because they do not like the requirement that all competitors have access to the wholesale services that a single competitor is successful in negotiating. The pick and choose requirement limits the incumbents’ ability to favor a particular competitor and endow it with attractive terms and conditions, while denying those terms and conditions to others. Covad Comments at 8. Verizon’s comments illustrate Covad’s point. Verizon argues that “the failure to replicate a particular network capability or technology included in a FLEX contract for another carrier should not constitute an unreasonable preference or discrimination in any state or federal proceeding.” Verizon Comments at 3. Absent regulatory review over incumbent negotiated contracts with competitors, incumbents will certainly use their monopoly positions to the disadvantage of competitors.

Incredibly, Verizon even goes so far as to suggest that FLEX contracts be exempt from section 201(b), 202(a) and the section 208 complaint process. Verizon Comments

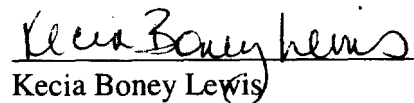
at 4. This is just absurd. Even BellSouth noted that the Commission would retain jurisdiction for carriers to file a section 208 complaint. WorldCom finds it highly unusual that the Commission would waive its jurisdiction over an entire category of interconnection agreements, particularly when those agreements would not have been subject to any prior regulatory review before adoption, as Congress intended. While certain disputes are routinely handled through arbitration or court litigation, the Commission's section 208 jurisdiction remains unchallenged.

#### CONCLUSION

For the foregoing reasons, WorldCom urges the Commission to deny Mpower's Petition.

Respectfully submitted,

WORLDCOM, INC.



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Dated: July 18, 2001

## Certificate of Service

I, Lonzena Rogers, hereby certify, that on this eighteenth day of July, 2001, I have caused a true and correct copy Comments of WorldCom, Inc.'s Reply Comments in the matter of CC Docket No. 01-117 to be served by United States Postal Service first class mail, facsimile, and hand delivery on the following:

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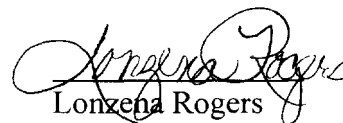
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